

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P.No.3291 of 2017

7 Star Nanbargal Manamagil Sangam
rep. by its Secretary,
A.Soundarajan,
No.67/1, Malai Adivaram,
Kalanipakkam Village,
Vellore District.

... Petitioner

Vs.

1. The Superintendent of Police,
Vellore, Vellore District.
2. The Deputy Superintendent of Police,
Ambur, Vellore District.
3. The Inspector of Police,
Pallikonda Police Station,
Vellore, Vellore District.

.... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Mandamus, forbearing the respondents, their men and subordinates from interfering with the day-to-day activities of the 7 Star Nanbargal Manamagil Sangam situated at No.67/1, Malai Adivaram, Kalanipakkam Village, Annacut Taluk, Vellore District, except with the due process of law herein.

For Petitioner : Mr.M.Sathishkumar

For Respondents : Mr.P.V.Dorai Solamalai,
Additional Government Pleader

O R D E R

By consent, the Writ Petition itself is taken up for final disposal.

2. The Writ Petition has been filed seeking to issue a Writ of Mandamus, forbearing the respondents, their men and subordinates from interfering with the day-to-day activities of the 7 Star Nanbargal Manamagil Sangam situated at No.67/1, Malai Adivaram, Kalanipakkam Village, Annacut Taluk, Vellore District, except with the due process of law herein.

3. Heard the learned Counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

4. On the face of the records, it appears that in respect of the same prayer, already, the petitioner Sangam has filed a Writ Petition in W.P.No.32929/2016 before this Court and by an order dated 26.10.2016, the same was dismissed on the basis of the report filed by the 2nd respondent herein in which it has been stated that the Sangam was controlled by the brother of the petitioner and there is already a criminal case pending against him for offences under Sections 8 and 9 of the Tamil Nadu Gambling Act. Now, the very same petitioner has filed the present Writ Petition alleging that a representation dated 22.01.2017 on behalf of the Sangam has been given to the respondents 1 and 2 with a copy to the 3rd respondent seeking for the relief sought for in this Writ Petition, which was filed within 15 days of sending such representation.

5. This Court, time and again had held in various decisions, in particular, in the judgment rendered by a Division Bench of this Court, in M.Ingaci Vs. The Commissioner. Devakottai Municipality, Sivagangai District reported in 2010 [2] Law Weekly 785, that what cannot be considered, cannot be directed to be considered. The Division Bench in the decision cited supra, has held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on the decision of the Hon'ble Supreme Court reported in the case of A.P.SRTC Vs.G.Srinivas Reddy (2006)3 SCC 674=2006, 3 Law Weekly 170, wherein in Para Nos.18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pilable' authorities have misused the direction to 'consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation.

When the court disposes of the petition with a direction to 'consider' the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

6. In view of the above cited decision, this Court is of the view that the writ petition is not maintainable and is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

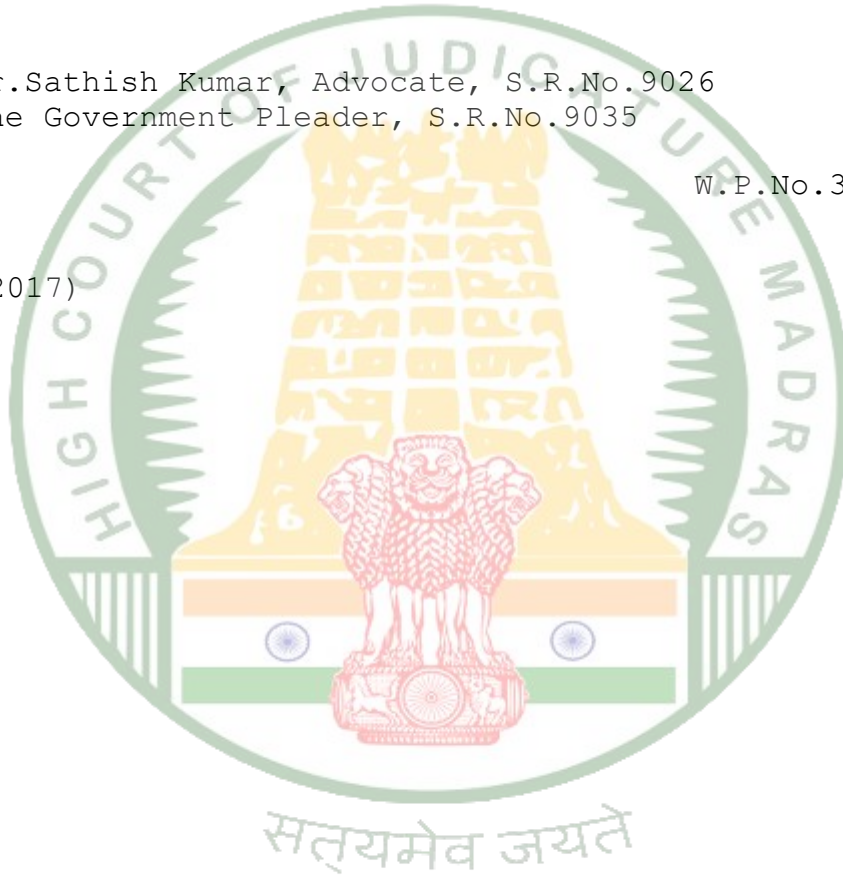
To

1. The Superintendent of Police,
Vellore, Vellore District.
2. The Deputy Superintendent of Police,
Ambur, Vellore District.
3. The Inspector of Police,
Pallikonda Police Station,
Vellore, Vellore District.

+1cc to Mr.Sathish Kumar, Advocate, S.R.No.9026
+1cc to the Government Pleader, S.R.No.9035

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GMI (CO)
CA(22/02/2017)



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